

maintain assets in other accounts managed by the adviser.

The proposed amendments to Form N-1A would also clarify that the new disclosure that would be required regarding frequent purchases and redemptions of fund shares may not be omitted from the prospectus in reliance on current Item 7(f), which would be redesignated as Item 7(g).³⁶ Current Item 7(f) permits funds to omit from the prospectus certain information concerning purchase and redemption procedures if, among other things, the information is included in a separate document that is incorporated by reference into, and filed and delivered with, the prospectus.³⁷ We believe that the information required by new Item 7(e) is more appropriately included in the same document as the prospectus.

We are proposing to require similar disclosure in Forms N-3,³⁸ N-4,³⁹ and N-6,⁴⁰ the registration forms for insurance company separate accounts that issue variable annuity and variable life insurance contracts, with respect to both the risks of frequent transfers of contract value among sub-accounts, and the separate account's policies and procedures with respect to such frequent transfers. However, we are proposing the following modifications to address the different structure of these issuers:

- The proposed amendments to Forms N-3, N-4, and N-6 would require disclosure regarding the risks of, and policies and procedures with respect to, frequent transfers of contract value among sub-accounts of the registrant. A person attempting to engage in market timing of mutual funds through a variable annuity or variable life insurance contract typically would make tax-free transfers of contract value among sub-accounts, each of which invests in a particular underlying mutual fund.⁴¹

- The proposed amendments to Forms N-4 and N-6 would require disclosure with respect to whether the separate account or its depositor has policies and procedures with respect to frequent transfers of contract value among sub-accounts, rather than whether such policies and procedures have been adopted by the separate account's board of directors. The separate accounts registered on these forms are unit investment trusts, which do not have boards of directors, and the depositor would be responsible for adopting and implementing any policies and procedures.⁴² If neither the separate account nor the depositor has any such policies and procedures, the proposals would require that the prospectus include a statement of the specific basis for the view of the depositor that it is appropriate for the separate account and depositor not to have such policies and procedures.⁴³

- The proposed amendments to Forms N-3, N-4, and N-6 would require disclosure of the risks that frequent transfers of contract value among sub-accounts may present not only for other contractowners, but also for other persons who have material rights under the contract (including, in the case of Forms N-3 and N-4, participants, annuitants, and beneficiaries, and, in the case of Form N-6, the insured or beneficiary).⁴⁴

- The proposed amendments to Forms N-3, N-4, and N-6 that require disclosure of any arrangements for detecting frequent transfers of contract value among sub-accounts would not explicitly reference arrangements for detecting transfers through intermediaries, such as investment advisers, broker-dealers, transfer agents, and third party administrators.⁴⁵ Because the variable annuity and variable life insurance contracts registered on these forms are typically held in the name of the contractowner and not an intermediary, insurance companies generally will not need to enter into any such arrangements with intermediaries in order for the insurance company to be able to detect frequent transfers among sub-accounts. If an insurance company had any such arrangements with intermediaries,

contract's surrender or maturity. See I.R.C. section 7702(g) (1986).

⁴² Proposed Item 7(e)(ii) of Form N-4; proposed Item 6(f)(2) of Form N-6.

⁴³ Proposed Item 7(e)(iii) of Form N-4; proposed Item 6(f)(3) of Form N-6.

⁴⁴ Proposed Item 8(e)(i) of Form N-3; proposed Item 7(e)(i) of Form N-4; proposed Item 6(f)(1) of Form N-6.

⁴⁵ Proposed Item 8(e)(iv)(D) of Form N-3; proposed Item 7(e)(iv)(D) of Form N-4; proposed Item 6(f)(4)(iv) of Form N-6.

however, disclosure of those arrangements would be required.

- The proposed amendments to Forms N-3, N-4, and N-6 would specifically require disclosure concerning any consideration received by the sponsoring insurance company pursuant to any arrangements to permit frequent transfers of contract value.⁴⁶

- A proposed Instruction in Form N-3 clarifies that consideration received pursuant to arrangements to permit frequent transfers of contract value includes any agreement to maintain assets in the registrant or in other investment companies or accounts managed or sponsored by the investment adviser, the insurance company, or any affiliated person of the investment adviser or the insurance company.⁴⁷ The parallel proposed Instructions in Forms N-4 and N-6 would include as consideration any agreement to maintain assets in the registrant or in other investment companies or accounts managed or sponsored by any investment adviser of a mutual fund in which a sub-account of the registrant is invested, the sponsoring insurance company, or any affiliated person of such an investment adviser or the insurance company.⁴⁸

We request comment generally on the proposals described above and specifically on the following issues:

- Should we require that mutual funds and insurance company separate accounts make each of the proposed disclosures discussed above? Should we require any additional disclosures?

- Is the prospectus the appropriate location for each of the proposed disclosures? Would all or part of the disclosure be more appropriately located in the SAI, reports to shareholders, Form N-CSR, the registrant's Web site, or another location? Should we permit mutual funds to disclose any of the required information in the separate disclosure document referenced in current Item 7(f) of Form N-1A?

- Several Items of Forms N-1A, N-3, N-4, and N-6 (e.g., Items 3, 7(c), and 8(a)(2) of Form N-1A; Items 3 and 8(b)(ii) of Form N-3; Items 3 and 7(b)(ii) of Form N-4; and Items 3 and 6(b)(2) of Form N-6) call for disclosures that are related to the disclosures called for by the proposals. Should we amend any of these other Items or alter the proposals

⁴⁶ Proposed Item 8(e)(v) of Form N-3; proposed Item 7(e)(v) of Form N-4; proposed Item 6(f)(5) of Form N-6.

⁴⁷ Proposed Instruction to Item 8(e)(v) of Form N-3.

⁴⁸ Proposed Instruction to Item 7(e)(v) of Form N-4; proposed Instruction to Item 6(f)(5) of Form N-6.

³⁶ Proposed Item 7(g) of Form N-1A.

³⁷ Item 7(f) of Form N-1A.

³⁸ Proposed Item 8(e) of Form N-3. Form N-3 is used by all insurance company separate accounts offering variable annuity contracts that are registered under the Investment Company Act as management investment companies.

³⁹ Proposed Item 7(e) of Form N-4. Form N-4 is used by all insurance company separate accounts offering variable annuity contracts that are registered under the Investment Company Act as unit investment trusts. See section 4(2) of the Investment Company Act [15 U.S.C. 80a-4(2)] (defining "unit investment trust").

⁴⁰ Proposed Item 6(f) of Form N-6. Form N-6 is used by all insurance company separate accounts offering variable life insurance policies that are registered under the Investment Company Act as unit investment trusts.

⁴¹ Increases in the cash values of variable annuity and variable life insurance contracts—known as the "inside buildup"—are tax-deferred until the